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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re I.F.R.A. SRL

Serial No. 75878447

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Before Quinn, Zervas and Kuhlke, Administrative Trademark
Judges.

Opinion by Zervas, Administrative Trademark Judge:

I.F.R.A. SRL filed, on December 22, 1999, an
application to register on the Principal Register the mark
IT'S for "steering wheels, shift knobs, alloy wheels; pedal
kits comprising brake pedal[s], acceleration pedals, and
clutch pedals; [and] products for decoration of cars,
namely, side door stops, aluminum frame housing for shift
handles, seat covers and steering wheel covers" in
International Class 12. The application is based on a bona
fide intent to use the mark in commerce under Trademark Act

Section 1(b), 15 U.S.C. §1051(b). Applicant asserted a second basis for filing, namely a right of priority under Trademark Act Section 44, 15 U.S.C. §1126, based on an Italian application that eventually matured into Italian Registration No. 873901.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of the previously registered mark IT-S for "antitheft alarms for vehicles" in International Class 12.¹

Applicant has appealed the final refusal. Both applicant and the examining attorney have filed briefs. Applicant did not request an oral hearing.

Our determination of the examining attorney's refusal to register the mark under Section 2(d) of the Trademark Act is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between

¹ Registration No. 2369274, issued July 18, 2000.

the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We turn initially to the first *du Pont* factor, i.e., whether applicant's mark and the cited registered mark are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. In this case, the marks both consist of the letters "i," "t" and "s," have such letters in the same order, and have punctuation between the "t" and the "s." Thus, we disagree with applicant's contention that the marks are different in appearance and find that the marks are highly similar in appearance.

We recognize that the marks may differ somewhat in sound and connotation. Insofar as sound is concerned, because the registered mark does not form a word in the English language, registrant's mark, when spoken, conceivably may be identified by the letters appearing in the mark, i.e., as "eye-tee-es." However, there is no "correct" pronunciation of a trademark because it is impossible to predict how the public will pronounce a mark. See, e.g., *In re Great Lakes Canning, Inc.*, 227 USPQ 483 (TTAB 1985). Thus, it is just as likely that the mark may

be pronounced as "its," that is, the same way as applicant's mark. We also recognize that registrant's mark has no apparent meaning whereas applicant's mark does have meaning in the English language (applicant states it is "the possessive of the word 'it'" -- see p. 2 of applicant's brief). However, inasmuch as registrant's mark may be perceived as "its," consumers in that case would ascribe similar meanings to the marks.

Notwithstanding any differences in sound and meaning between the marks, the similarities in appearance are so strong in view of the shared letters "i," "t" and "s" in both marks, in the same letter order and with punctuation in the same location, that they outweigh any differences in sound and connotation. We find, therefore, that the overall commercial impressions of the marks are very similar, particularly in view of the fallible memories of consumers, who retain general impressions of marks and cannot be presumed to have the luxury of being able to compare applicant's and registrant's marks side-by-side. See *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735 (TTAB 1991), *aff'd*. No. 92-1086 (Fed. Cir. June 5, 1992).

We now turn to the second *du Pont* factor, i.e., the similarity or dissimilarity and nature of the goods of the

application and registration. It is well settled that goods need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of the goods and/or services. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

For the reasons set forth below, we find that applicant's goods are sufficiently related to the goods identified in the cited registration, so that confusion is likely to occur in the marketplace. First, "it has been frequently been found that the marketing by different parties of different types of vehicular parts under the same or similar marks is likely to cause confusion." *In re Jeep Corp.*, 222 USPQ 333 (TTAB 1984). Applicant's "steering wheels, shift knobs, alloy wheels; pedal kits comprising brake pedal[s], acceleration pedals, and clutch pedals; [and] products for decoration of cars, namely, side

door stops, aluminum frame housing for shift handles, seat covers and steering wheel covers," and registrant's "antitheft alarms for vehicles," as vehicular parts or enhancements, are commercially closely related. See *Permatex Company, Inc. v. California Tube Products, Inc.*, 175 USPQ 764 (TTAB 1972). Second, the examining attorney has submitted numerous third-party registrations, based on use in commerce, in which the identifications of goods include one or more of applicant's goods and antitheft alarms for vehicles. Although such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); and *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

Applicant has argued that "all of the cases which have been cited by the Examiner," e.g., *In re Jeep, supra*, are inapposite because they involve:

... automotive parts which are generally sold in the same type of store or retail outlet [e.g.] vehicle tires are ... sold in the same outlets as antifreeze or automobile tires ... These are all essentially "parts" for automobiles. This is in

complete contrast to the goods identified for the present application which are in essence parts which are generally used for decoration of cars or for add on's [sic] to automobiles, e.g., shift knobs, alloy wheels and pedal kits. Such parts are normally sold in after market retail outlets as opposed to repair shops where one would obtain a new muffler, clutches, brakes, tires, and the like for automobiles.

We disagree. Applicant's identification of goods includes goods such as steering wheels which are basic to any vehicle. Further, we do not consider such basic items to be purely "decorative" or "add on's" [sic], as applicant maintains, because applicant's identification of goods does not include such limitations. Rather, we assume that applicant's goods are used in all normal uses - including non-decorative uses (other than, of course, the claimed "products for decoration of cars") - because restrictions may not be read into an identification of goods. See *Kangol Ltd. v. KangaROOS U.S.A., Inc.* 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992). Such goods would likely be sold in the same locations as those goods described in the cases cited by the examining attorney.

We next consider the third *du Pont* factor, i.e., the similarity or dissimilarity of established, likely-to-continue trade channels of applicant's and registrant's goods. With respect to trade channels, applicant maintains that while applicant's goods are "used for decoration of

cars or for add on's" [sic] and sold in after market retail outlets, registrant's goods:

... are normally electronic devices which are sold in shops which specialize in electronic devices for cars, e.g., radios, in-car stereo units and CD players, and the like. They require professional installation usually either by the particular shop where the device is purchased, or if it is purchased through the internet, an installer with a special skill.

However, neither the application nor the cited registration is in any way restricted as to channels of trade for the respective goods. It is therefore presumed that the goods identified in the application and cited registrations encompass all goods of the type described, that the goods move in all normal channels of trade, and that the goods are available to all potential customers of such products. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Such channels of trade would not be limited to specialty shops for electronic devices. We hence find that applicant's goods travel in the same trade channels as registrant's antitheft alarms.

Next, we consider the fourth *du Pont* factor, i.e., the purchasers of applicant's and registrant's goods. We have no proof that buying registrant's and applicant's goods involves a deliberative process or that a great deal of care and discrimination would usually be exercised by

purchasers in making the decision to buy these parts and accessories. The primary purchasers of applicant's and registrant's automotive parts must be deemed to be members of the general public. Thus, we find that purchasers of the array of automotive parts and accessories set forth in the application also would encounter antitheft alarms for vehicles in the same retail locations and that purchasers of the goods would exercise nothing more than ordinary care. The fourth *du Pont* factor hence is resolved against applicant in our likelihood of confusion determination.

In view of the foregoing, we conclude that applicant's mark IT'S for "steering wheels, shift knobs, alloy wheels; pedal kits comprising brake pedal[s], acceleration pedals, and clutch pedals; [and] products for decoration of cars, namely, side door stops, aluminum frame housing for shift handles, seat covers and steering wheel covers" is likely to cause source confusion among purchasers with the registered mark IT-S for "antitheft alarms for vehicles." To the extent that any doubt might exist as to the correctness of this conclusion, we resolve such doubt against applicant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

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Decision: The refusal to register under Section 2(d)
is affirmed.